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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,372	10/20/2003	Douglas Sean Morris	47869/265209	2852
826	7590	07/21/2006	EXAMINER HOGE, GARY CHAPMAN	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			ART UNIT 3611	

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/689,372	<b>Applicant(s)</b> MORRIS, DOUGLAS SEAN	
	<b>Examiner</b> Gary C. Hoge	<b>Art Unit</b> 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,18-37,39,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-16,18-33,35 and 36 is/are rejected.
- 7) ☒ Claim(s) 34,37,39,41 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-16, 18-31, 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zielinski et al. (5,676,276) in view of Fast (WO 90/09017).

Zielinski et al. discloses a stackable food storage container having a bottom wall **20**; a peripheral wall **13** having inner and outer surfaces, the peripheral wall having a top end and a bottom end that adjoins the bottom wall, the peripheral wall and the bottom wall defining a storage area for food. However, Zielinski does not disclose a label holder. Fast teaches that it was known in the art to provide a transparent label holder attached to the peripheral wall of a container (see Fig. 4), the label holder having first and second sidewalls **16** and a front wall **20** spaced away from the outer surface of the peripheral wall (see Fig. 3) to define a partially closed gap therebetween to receive a display token **34**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to container disclosed by Zielinski with a label holder, as taught by Fast, in order to identify the contents of the container.

Regarding claims 4 and 19, it is clear that the lip disclosed by Zielinski projects considerably farther than the front wall disclosed by Fast, which is just spaced enough to allow for the insertion of a piece of paper.

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Regarding claims 7 and 22, the front wall disclosed by Fast includes an opening 28 therethrough.

Regarding claims 8 and 23, note that there is a gap between the bottom lip 18 and the adhesive 24 of the sidewalls 16. Water would be able to drain through this gap.

Regarding claims 10 and 25, it has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

Regarding claims 11 and 29, the front wall of the display window and the peripheral wall define an angle of zero degrees therebetween.

Regarding claims 12 and 35 it would have been obvious to provide additional display windows on the peripheral wall because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 14 and 30, it is clear that Fast contemplates an unlimited number of display tokens, i.e., labels. As to what's written on the labels, that is an obvious matter of choice in design.

Regarding claims 20 and 31, Fast discloses the invention substantially as claimed, as set forth above. However, it is not known what material is contemplated for the fabrication of the label card. Because it is within the level of ordinary skill of a worker in the art to select from among known materials on the basis of their suitability for the fabrication of a given device, and since a person having ordinary skill in the art would know that polyethylene or polycarbonate would be suitable for the fabrication of a label card, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to fabricate the label card disclosed by Fast from polyethylene or polycarbonate as a matter of choice in design, based on such factors as cost and availability of the materials to the designer.

Regarding claim 26, it would have been obvious to make the label about 2 millimeters in thickness because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 27, it has been held that matters relating to ornamentation only, and having no mechanical function, cannot be relied on where claims are not directed to design but are structural claims. *In re Seid*, 73 USPQ 431.

Regarding claim 33, the label card disclosed by Fast is “adapted to” support whatever indicia is desired.

3. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zielinski et al. (5,676,276) in view of Fast (WO 90/09017), as applied to claim 13, above, and further in view of Kiggins (5,901,485).

Zielinski discloses the invention substantially as claimed, as set forth above. However, it is not known whether the label cards have indicia on both sides. Kiggins teaches that it was known in the art to provide a label card having indicia on both sides “for reversible use” (col. 3, lines 22-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the label card disclosed by Zielinski, as modified, with indicia on both sides, as taught by Kiggins, to enable reversible use of the card.

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4. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fast (WO 90/09017) in view of Uitz (5,275,302).

Fast discloses a method including the steps of providing a container having a peripheral wall and a display window extending from the peripheral wall (as set forth above); selecting a display token (i.e., a label) corresponding to information pertaining to the contents of the container; and inserting the display token in the gap defined by the display window and the peripheral wall. However, Fast does not disclose storing food in the container. Uitz teaches that it was known in the art to store food in a plastic shipping container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to store food in the container disclosed by Fast, as taught by Uitz, in order to ship the food to another location.

***Allowable Subject Matter***

5. Claims 34, 37, 39, 41 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gary C Hoge  
Primary Examiner  
Art Unit 3611

gch